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**Compass Group North America and its subsidiaries
Morrison Management Specialists and Morrison
Senior Dining and American Federation of
State, County and Municipal Employees, AFL–
CIO, and its Local 2568. Case 7–CA–51876**

November 19, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks default judgment in this case pursuant to the terms of a settlement agreement. Upon a charge filed by American Federation of State, County and Municipal Employees, AFL–CIO, and its Local 2568 (collectively the Union) on March 3, 2009, the General Counsel issued the original complaint on May 12, 2009, against Compass Group North America and its subsidiaries Morrison Management Specialists and Morrison Senior Dining (the Respondent), alleging that it had violated Section 8(a)(5) and (1) of the Act.

Subsequently, the Respondent and the Union entered into a settlement agreement, which was approved by the Regional Director for Region 7 on June 12, 2009. Among other things, the settlement agreement required the Respondent to (1) furnish the Union with the information it requested; (2) remit to the Union all dues and initiation fees that it had deducted from the paychecks of the unit employees, totaling \$8,406.85, plus \$100 in interest; and (3) post a notice to employees regarding the complaint allegations.

The settlement agreement also contained the following provision:

The Charged Party agrees that in case of noncompliance with any of the terms of this settlement agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such noncompliance without remedy by the Charged Party, the Regional Director may reissue the complaint in this matter. The General Counsel may then file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the reissued complaint may be deemed to be true by the Board and its answer to such complaint shall be considered withdrawn. The Charged Party also waives the following: (a) filing of answer; (b) hearing; (c) administrative law judge's decisions; (d) filing of exceptions and briefs; (e) oral argument before the Board; (f) the mak-

ing of findings of fact and conclusions of law by the Board; and (g) all other proceedings to which a party may be entitled under the Act or the Board's Rules and Regulations. On receipt of said motion for default judgment, the Board shall issue an order requiring the Charged Party to show cause why said motion of the General Counsel should not be granted. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is customary to remedy such violations. The parties further agree that the Board's order and U.S. Court of Appeals judgment may be entered thereon *ex parte*.

By letter dated July 6, 2009, the compliance officer for Region 7 advised the Respondent that the Region had not yet received \$100 in dues and fees that remained to be paid to the Union or information demonstrating that the Respondent had posted the required notice to employees. In this letter, the compliance officer also noted the Union's allegations that the Respondent was not in compliance with the settlement agreement provisions concerning dues withholding and furnishing the Union with requested information, requesting the Respondent's response to these allegations by July 17, 2009. By letter dated July 24, 2009, the Regional Director for Region 7 again reminded the Respondent of its obligations to (1) post signed and dated copies of the notice and inform the Region when and where they were posted; (2) remit \$100 in interest to Region 7; and (3) furnish the Union with the requested information. In this letter, the Regional Director also warned the Respondent that its failure to comply within 14 days will result in the Regional Director setting aside the settlement agreement, reissuing the complaint, and filing a motion for default judgment. The Respondent failed to comply. Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, the Regional Director issued an Order Setting Aside Settlement Agreement on September 4, 2009 and reissued the complaint on September 8, 2009.

On September 18, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 24, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment¹

According to the uncontroverted allegations in the Motion for Default Judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to furnish the Union with requested information, pay the agreed-upon interest payment, and post an appropriate notice. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued complaint are true.² Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with headquarters in Charlotte, North Carolina, and places of business in Dearborn, Michigan (the Oakwood Commons facilities), has been engaged in the provision of food, nutrition, and dining services to healthcare and senior living communities.

During calendar year 2008, a representative period, the Respondent, in conducting its business operations described above, purchased and received at the Oakwood Commons facilities goods valued in excess of \$50,000 from other enterprises located within the State of Michigan, each of which other enterprises had received those goods directly from points outside the State of Michigan.

During calendar year 2008, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. September 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted ___ S.Ct. ___, 2009 WL 1468482 (U.S. Nov. 2, 2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see *Laurel Bay Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed, ___ U.S.L.W. ___ (U.S. September 29, 2009) (No. 09-377).

² See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Bill Breslin	Senior Labor Relations Director
Steve Berry	Director, Oakwood Commons
W. Forrest Coley, Jr.	Director Employee Transitions
Kevin McLaughlin	Operations Manager until about March 2009

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time service and maintenance employees of the Respondent, whose work relates to the food service contract between Respondent and Oakwood Healthcare Promotion, Inc. (OHP), employed at the Oakwood Common Retirement Community and Oakwood Rehabilitation and Skilled Nursing Center, located at 16351 and 16391 Rotunda Drive, Dearborn, Michigan, including cooks, cook/team leaders, food service assistants, hostesses, and servers, or any Respondent classifications which perform work similar to these OHP job classifications; but excluding employees of OHP who are also members of AFSCME Local 2568, business office clerical employees, professional and technical employees, RNs, LPNs, and guards and supervisors as defined in the Act.

For many years until about June 30, 2008, the Union was the exclusive collective-bargaining representative of the unit employed by OHP. OHP's recognition of the Union as such representative was embodied in successive collective-bargaining agreements, the most recent of which was effective January 1, 2006 through December 31, 2008.

About July 1, 2008, OHP laid off, and the Respondent hired, the employees of the unit, who continued to provide food and maintenance services at the Oakwood Commons facilities.

Since about July 1, 2008, the Union has been the designated exclusive collective-bargaining representative of the unit, and the Respondent has recognized the Union as such representative. This recognition is embodied in a collective-bargaining agreement between the Respondent and the Union, effective July 1 through December 31, 2008, and, by agreement of the parties, extended day to day thereafter.

Until about July 1, 2008, based on Section 9(a) of the Act, the Union was the exclusive collective-bargaining representative of the unit employed by OHP.

At all times since July 1, 2008, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit.

The collective-bargaining agreement between the Respondent and the Union referred to above contains, *inter alia*, a checkoff provision at Section 3.1, requiring the Respondent to remit the union dues and initiation fees it has deducted from the pay of unit employees to the financial secretary of the Union, by the 30th day of the month in which the deductions are made.

Since about September 17, 2008, the Union, by Local 2568 president Cindy Spurlock, has requested in writing that the Respondent furnish it with payroll records for all unit employees reflecting paycheck deductions for health insurance and union dues.

Since about November 12, 2008, the Union, by Local 2568 president Cindy Spurlock, has requested in writing that the Respondent furnish it with payroll records for all unit employees for the period July 1 to November 12, 2008.

The information requested by the Union, described above, is necessary for, and relevant to, the performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about September 17 and November 12, 2008, respectively, the Respondent has failed and refused to furnish the Union's requested information described above.

Since about July 1, 2008, the Respondent has deducted Union dues from the paychecks of certain unit employees, but has failed and refused to remit any of such monies to the Union.

The Respondent's failure and refusal to remit deducted dues to the Union relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

The Respondent has failed and refused to remit deducted dues to the Union without prior notice to the Union, without affording the Union an opportunity to bargain with respect to such conduct and the effects of such conduct, and without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair

labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to provide information to the Union that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information that it requested on September 17 and November 12, 2008. Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit dues to the Union that it deducted from unit employees' paychecks, we shall order the Respondent to make the payments described below. In this regard, the Respondent agreed in the settlement agreement that it would pay the Union a total of \$8506.85, which included \$8406.85 in unremitted dues plus interest in the amount of \$100. The General Counsel's motion states that there is an outstanding balance in the amount of \$100. Accordingly, we shall order the Respondent to remit this amount to the Region for payment to the Union.

We find, however, that the payments owed to the Union should not be limited to this amount. As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could issue an Order "providing a full remedy for the violations found as is customary to remedy such violations." Thus, under this language, it is appropriate to provide the "customary" remedy³ of requiring the Respondent to pay the amount of any further unremitted dues and initiation fees to the Union, with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁴ However, because we shall order the Respondent to pay the liquidated remedy specified in the settlement agreement, minus the amounts already paid, the applicable payment period for any further amounts due will commence on June 12, 2009, the day the Regional Director approved the settlement agreement. We find it necessary to impose this limitation to prevent an unintended double recovery for the period

³ See *L.J. Logistics, Inc.*, 339 NLRB 729, 730-731 (2003).

⁴ In the complaint, the General Counsel seeks compound interest computed on a quarterly basis for any monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham*, 352 NLRB 516, 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

running from the date that the Respondent failed to remit dues to the effective date of the settlement agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Compass Group North America and its subsidiaries Morrison Management Specialists and Morrison Senior Dining, Charlotte, North Carolina and Dearborn, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish American Federation of State, County and Municipal Employees, AFL-CIO, and its Local 2568 (collectively the Union) with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(b) Failing and refusing to remit to the Union the dues deducted from the paychecks of unit employees as required by section 3.1 of the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on September 17 and November 12, 2008.

(b) Remit to Region 7 the payment of \$100 to be disbursed in accordance with the June 12, 2009 settlement agreement, and remit to the Union any dues deducted since June 12, 2009 from the paychecks of unit employees pursuant to section 3.1 of the collective-bargaining agreement that have not been remitted, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days after service by the Region, post at its facilities in Charlotte, North Carolina, and Dearborn, Michigan, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the

notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2008.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 19, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to furnish American Federation of State, County and Municipal Employees, AFL-CIO, and its Local 2568 (collectively the Union) with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail and refuse to remit to the Union the dues deducted from the paychecks of unit employees as required by section 3.1 of the collective-bargaining agreement.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union on September 17 and November 12, 2008.

WE WILL remit to Region 7 the payment of \$100 to be disbursed in accordance with the June 12, 2009 settlement agreement, and WE WILL remit to the Union any

dues deducted since June 12, 2009, from the paychecks of unit employees pursuant to Section 3.1 of the collective-bargaining agreement that have not been remitted, with interest.

COMPASS GROUP NORTH AMERICA AND ITS
SUBSIDIARIES MORRISON MANAGEMENT
SPECIALISTS AND MORRISON SENIOR DINING